Landmark Judgements on
Environmental Protection

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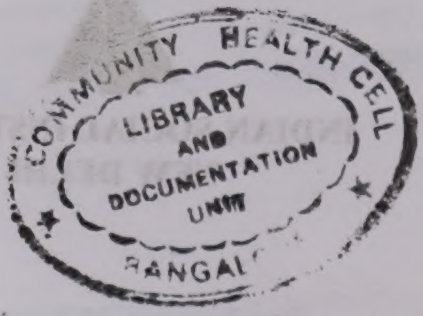

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Introduction

Humans and nature had an uneasy relationship from the dawn of civilisation. Though there was apparent harmony between them in the beginning, human progress had always been at the cost of nature. In recent times, the pace of scientific advance and urbanisation have increased the danger to our environment. So much so that even villages and forests are not safe from ecological threats. The signs are everywhere. Forest-dwellers have begun to protest against dams and thermal power stations constructed in their habitats. Industries emitting chemical fumes and polluting water sources have contaminated even the air and drinking water supply of villages, causing health hazards and destruction of flora and fauna. It is not safe to breathe the air in our cities.

Awareness of this danger has fortunately been in an equal measure. Environmental groups have risen almost everywhere and they alert society whenever there is a danger, even at the risk of overdoing it. Under the pressure of public opinion, the government has passed several legislations to control pollution from different sources.

There are at present seven major central legislations dealing with environment. They are complemented by a number of Central Rules and notifications. The Environment (Protection) Act 1986 is the most comprehensive law on the subject. It was passed to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in 1972, in which India participated.

The law grants powers to the central government to take all measures necessary to protect and improve the quality of environment and to prevent pollution of the environment. For example, the steps may include coordination of the actions of the State Governments, officers and other authorities, laying down

standards for the quality of environment, and standards for emission or discharge of pollutants from various sources. It can restrict areas where industries can be set up. It can lay down procedures and safeguards to prevent accidents and handling of hazardous substances. The government can examine the manufacturing processes and materials used from the environmental aspect. It can inspect any premises, machinery or substances. The government is empowered to constitute authorities to exercise its power. The officers appointed by the government under this law can order the closure or regulation of the process of an industry or the stoppage or regulation of the supply of electricity or water or any other service. The government can pass rules for this purpose and it has in fact issued detailed rules in 1986.

No person shall discharge environmental pollutant in excess of the prescribed standards. No person shall handle hazardous substances except in accordance with the safety procedures.

The government may establish environmental laboratories and appoint analysers for testing samples of air, water soil and other substances. Those who violate the law shall be punished with imprisonment which may extend to five years and fine upto Rs 1 lakh. There shall be additional fine for every day if the contravention of law continues. If a company commits the offences, not only the company but even its officials responsible shall be deemed guilty. Such person shall be acquitted only if the offence was committed without his knowledge or if he proves that the act was committed despite all due diligence. If the offence is committed by a department of government, the head of the department shall be deemed to be guilty. The exemptions available to company officials are also available to the head of the department.

A complaint may be filed by the government or its officers or by any person who has given 60 days' notice to the concerned authorities.

The earliest of the Acts to protect environment is the Water (Prevention and Control of Pollution) Act 1974. One of the major achievement of this Act was the setting up of Central and State water pollution control boards. The Act details the composition of the boards at the two levels. They have a chairman, a full-time member-secretary and non-officials who are experts in the field. The powers and functions of the Central board include:- (a) to promote cleanliness of streams, rivers and other water sources, (b) to advise the Central Government on prevention of water pollution, (c) co-ordinate disputes between state boards, (d) to provide technical assistance to state boards, (e) to plan and organise training of persons in pollution control measures, and (f) to execute national programmes to prevent water pollution. The State boards also have similar powers and functions at the State level.

The boards and their officers have the power to make surveys in regard to water sources in regard to water sources and obtain information from any person. They can also take samples of effluents from plants and streams. A detailed procedure has been set forth for this purpose. Such samples may be tested in the boards' laboratories and the report may be submitted to the boards. The boards' officers have the power of entry and inspection of any place for checking pollution. No stream, well or water sources can be used for disposal of polluting matter. There shall be no new outlets and new discharges without the permission of the concerned board. If any emergency steps are to be taken to prevent pollution, the board may take immediate steps after recording the reasons for doing so. The boards can also move a court to restrain a person (or company) from polluting the water sources.

Offences under the Act are punishable with imprisonment which may extend upto three months and fine or both. The fine at present is a meagre Rs 10,000/- for the first offence. An additional fine of Rs 5,000 a day may also be imposed for continu-

ing violation of the Act. As in the case of the Environment (Protection) Act, the offending company as well as the persons responsible for the offence (like the directors, manager and secretary) will be liable for punishment. They are entitled to claim the mitigating circumstances quoted earlier. Government departments are also liable to be punished for offences under this Act.

The Water (Prevention and Control of Pollution) Rules, laying down detailed provisions for the working of the main Act, were passed in 1975. In 1977, the central government passed the Water (Prevention and Control of Pollution) Cess Act. It provides for the levy and collection of a cess on water consumed by persons (or companies) carrying on certain industries and the local authorities. This is meant to raise resources for the central and state boards. The cess is calculated on the basis of the water consumed by the industrial units or local authorities, according to a schedule given in the Act. In 1978, the central government passed detailed rules under this Act.

The Air (Prevention and Control of Pollution) Act 1981 is similar to the Water Pollution Act 1974. The Central Water Pollution Control Board and its state counterparts are also empowered to deal with air pollution. Their powers and functions are the same in regard to air pollution.

In addition, the state board may notify certain areas as "air pollution control areas." They can give instructions to the transport authorities for ensuring standards of emission from motor vehicles. No person shall, without the sanction of the board, establish any industrial plant in the air pollution control area. The state government may establish "air laboratories" to analyse air samples. Analysts may be appointed for the purpose. Rules under the Act were passed in 1982.

The Forest (Conservation) Act 1980 provides for the conservation forests. It says that no state government or other authority shall pass, except with the approval of the central government,

any order (a) de-reserving any reserved forest or part of it, (b) allowing any forest land for non-forest purpose, (c) leasing any part of the forest to private persons or organisations, or (d) allowing felling trees. The Act provides for the establishment of an advisory committee to advise the government on the above steps. Offences under this Act are punishable with imprisonment upto 15 days. In 1981, Rules under the Act were notified.

Brief mention may be made of the Wild Life (Protection) Act 1972. It provides for appointment directors and officers of wild life preservation, wild life wardens, and constitution of wild life advisory boards at the state level. Hunting of wild animals has been banned, with a few exceptions. The State Governments can declare specific areas as "sanctuaries", "national parks", "game reserves" or closed areas. Trade in wild animals, animal articles and trophies are banned and they are the property of the government. The authorities have power to enter, search and seize such articles. Persons dealing in them may be arrested. The offences are punishable with imprisonment upto six years, according to the gravity of the crime classified in the Act. Animals have been listed in the Act according to their wild life value.

The Act was amended in 1991 to give protection to specified plants too. No person shall pick, uproot, damage, destroy, collect, sell, gift or transport the specified plants from the forest. Cultivation of such plants without licence is prohibited. The law also provides for a central zoo authority to specify minimum standards for the zoos and evaluate their functioning. The 1991 Act also restricted the use of animals for entertainment like the circus.

The Public Liability Insurance Act was passed in 1992 to provide immediate financial assistance to victims of industrial accidents like that of the Bhopal gas disaster of 1984. In case of such accidents, the owner shall be liable for the death and injury caused. It is an absolute liability and the owner has to

compensate in any case, any person (other than his workers) affected by the accident. For payment of compensation, the companies shall insure themselves with the general insurance companies. But the rate of compensation is very low. For instance, for fatal accidents the relief will be Rs 25,000/- per person and for permanent injuries Rs 12,500/-.

There are numerous legislations dealing with environment. So far we had a bird's eye view of the major ones. But an activist in the environment field must also be aware of some other laws which affect the environment in various ways. They are only named here and for detailed study books on these laws must be consulted.

The following rules and notifications may be referred to in appropriate cases:

1. The Environmental Clearance Notification 1993.
2. The Environmental Audit Notification 1992.
3. The Coastal Regulation Zone Notification 1991.
4. The Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organism/Genetically Engineered Organisations or Cell Rules 1989.
5. The Manufacture, Storage and Import of Hazardous Chemicals Rules 1989.
6. The Hazardous Wastes (Management and Handling) Rules 1989.
7. The Wild Life (Transactions and Taxidermy) Rules 1973.
8. The Wild Life (Stock Declaration) Central Rules 1973.

Some other related central legislations are:

1. The River Boards Act 1956.
2. The Merchant Shipping Act 1970.
3. Indian Boiler's Act 1923.
4. The Mines and Minerals Act 1947.
5. The Factories Act 1948.
6. The Atomic Energy Act 1962.
7. The Radiation Protection Rules 1971.

8. The Poisons Act 1919.
9. The Insecticides Act 1968.
10. Indian Fisheries Act 1897.
11. Indian Forests Act 1927.
12. The Prevention of Food Adulteration Act 1954.
13. The Ancient Monuments and Archaeological Sites and Remains Act 1958.
14. The Urban Land (Ceiling and Regulation) Act 1976.

Though these Acts, rules and notifications look excellent on paper, their impact has not been up to the mark. Pollution levels are above the danger marks everywhere, whether it is the city air, drinking water sources or the food we eat. There are several reasons for this, like the tardiness and corruption of the enforcing machinery, shortage of equipment to detect and treat harmful effluents, lack of awareness and plain greed to make quick money. Prosecutions under these laws are few and far between as they are slowed down by criminal court procedures and hi-tech evidence.

Under these circumstances, the initiative taken by the Supreme Court in the field of environment is inspiring. It has used public interest litigation to help clean the environment in several parts of the country. For example, it has been monitoring the cleaning up of the Ganga for almost a decade. Several polluting industrial units have been closed down under its orders, though the pollution control boards could have done it earlier. It has shifted hundreds of air-polluting stone crushers from the borders of Delhi and rehabilitated them elsewhere. The court has ordered rehabilitation of forest-dwellers who were uprooted by a thermal plant. The Doon Valley has been retrieved by its orders. Pollution levels have been brought down around Taj Mahal. At present, the court is trying to shift polluting industrial units around the Taj and in Calcutta. It is monitoring the Ganga Action Plan.

All these are functions of the executive, some critics may say. But when the executive fails to act, the Supreme Court and the high courts can accept public interest petitions from the concerned citizens and pass directions to the authorities to implement the law. This is the essence of public interest litigation, which has come to stay. Therefore, if there is danger from environmental hazards affecting the life of the people (Article 21) and the authorities do not act, writ petitions may be filed under Article 226 of the Constitution in the high courts or under Article 32 in the Supreme Court. The law has now been well-established and the jurisdiction of the court to interfere in such matters is beyond doubt. The courts, of course, have discretion to take action or not.

A well-drafted writ petition giving sufficient data to support the allegations and affidavits supporting them should draw positive response from a sensitive bench. The petitioner must act in genuine public interest, and not as an agent of vested interests. The following compilation is a cross-section of judgements where the court has taken affirmative action on such petitions. Some cases of misuse of the rights have also been summarised. This collection is not complete, as environmental battles are being fought at this moment in several courts, including the Supreme Court. It is bound to increase with the unbridled industrialisation and consumerism. Therefore, familiarity with these leading judgements will be useful to any activist or alert citizen.

1. UPROOTING TRIBALS FOR THERMAL PLANT

Banwasi Seva Ashram vs. State of U.P.

This is one of the cases in which the interests of environment had to be balanced with that of industrial growth. In order to set up a thermal plant in Mirzapur district in U.P., a large number of tribals had to be evacuated. While the court allows the setting up of the plant, it ensures the rehabilitation of the displaced persons and compensation to them.

Facts: Banwasi Seva Ashram moved a writ petition in the Supreme Court highlighting several grievances of the tribals living in the forests. They were living in the jungle for ages, but now the government declared the forests as 'reserved' under the Indian Forests Act. The forest officers interfered with their livelihood and life style; they were even booked for encroaching on the forest land. They claimed several reliefs from the court, including regularisation of their title to the forest land. The court initially ordered that the tribals shall not make any further encroachment on the forest land or cut trees. The government was also directed not to displace them. The court also set up a committee to look into the claims of the tribals. Meanwhile the government decided to set up a thermal power plant in the region to be built by National Thermal Power Corporation (NTPC).

Ruling: At the first stage of the case in 1986, the court ordered clear demarcation of the area taken over by erection of pillars and announcing it by "beating of drums" and through pamphlets in Hindi to be distributed by gram sabhas The court also arranged for record officers to sort out the claims of the tribals The work was to be supervised by five additional district judges. The Supreme Court also set up an appellate authority to look into appeals Legal aid for the tribals was ensured.

After several hearings in between, the Supreme Court disposed of the petition in 1992 with elaborate directions on compensation to be given to the displaced tribals. The following are the important directions. NTPC was asked to submit the list of evictees to the district judge. Plots of the size 60' x 40' shall be given to each evictee. Shifting allowance (Rs 1,500) and a lumpsum rent of Rs 300 shall be given to each family. Free transportation shall be provided for shifting. Monthly subsistence allowance equivalent to loss of income from land for ten years shall be given. This payment shall not be linked to employment or any other compensation. Unskilled and semi-skilled posts in the thermal project shall be given to the oustees subject to suitability. Shops and other business premises within the NTPC campus shall be offered to the evictees. NTPC shall operate self-generating schemes for their benefit. It shall provide good roads, drainage system, water supply, schools, health centres, electricity and toilet facilities.

2. THERMAL STATION IN THANE APPROVED

Bombay Environmental Action Group vs. State of Maharashtra

This is another case in which environmentalists tried to stop a project beneficial to society, on the ground that it would harm the ecology. The court stressed the need to balance the competing interests and dismissed the petition.

Facts: The petitioners challenged the permission granted by the central and state governments to the Bombay Suburban Electric Supply Co.Ltd for establishing a 500 mega watt thermal power station in Thane district. It was argued that (1) the clearance was contrary to the study of the appraisal committee of the Ministry of Environment, (2) the project would violate the guideline requiring a distance of 500 metres to be kept between the high tide line mark and the construction, (3) the discharge of water used for cooling the plant would so increase the ambient temperature as to adversely affect the aquatic life and (4) and

the government's assurance that no industrial development would be allowed was not likely to be kept. The Government in reply countered each of these points with technical details and maintained that as many as 15 stringent conditions have been imposed before clearing the scheme. All concerned authorities have examined it and found the site most favourable from all angles. The company argued that the high court's power of judicial review was limited after all these steps and it can interfere only if there was malafides or ulterior motives on the part of the executive, which was not the case here.

Ruling: The court stated that considerable thought by all authorities and experts has gone into the decision-making process. The decision of the authorities cannot be said to be arbitrary or capricious or not in good faith.

The needs of the environment protection require to be balanced with the needs of the community at large and the needs of a developing country. If all safeguards are taken the check of judicial review should come to an end. "Endless arguments, endless litigation in a matter like this can carry one to no end and may well turn counter productive. . . Regarding a project like this, if steps are not taken well in time, this metropolis and its people will in the near future find themselves be set with serious energy crisis. It is in nobody's interest to inordinately delay this project of immense benefit. Any further delay would result in speedily rising costs as also loss of valuable time." the judgement said while dismissing the petition.

3. VEXATIOUS CASE IN NAME OF ENVIRONMENT

Chhetriya Pardushan Mukti Sangharsh Samiti vs. State of U.P.

This is an instance of abuse of the process of court to settle personal scores. The petitioner, who claimed to protect society from environmental hazards was shown to be a local blackmailer of rich industrialists. The public interest petition was dismissed with severe strictures.

Facts: The petitioner/organisation through its representative S.R. Panday wrote a letter to the Supreme Court, alleging environmental destruction by the Jhunjhunwala Oil Mills in the historic town of Sarnath. The letter was treated as a writ petition. It painted a ghastly picture of the devastation caused to the air, water and land by the effluents of the oil mill. Land became waste, crops withered, people suffered from TB, jaundice and other epidemics, the growth of the children were affected. Above all, the whole area could be ruined by a possible gas explosion.

The company, in its reply, submitted to the court that Panday was a blackmailer in the area. He had unsuccessfully filed cases against the company. There was no complaint from anyone else in the area except him. Moreover, the company could show that it had received the necessary environmental clearances for operating the mills.

Ruling: Considering the long history of enmity between the parties the court stated that it did not want to interfere in the complaint. Action under Article 32 can be taken only on a petition by a genuinely public spirited person acting on behalf of society. While the court has a duty to enforce the fundamental rights, it must also ensure that there was no misuse of the rights. In this case, "the court was misled and we must, therefore, proceed with caution. We must protect society from the so-called protectors," the court remarked while dismissing the petition.

4. KONKAN RAILWAY AND ENVIRONMENT

Goa Foundation vs. Konkan Railway Corporation

The work on the laying of the Konkan railway line from Bombay to Mangalore was preceded by a bitter controversy over its ecological impact. It took political and communal colour at one stage. This judgement of the Bombay High Court went a long way to settle the dispute and clear the project.

Facts: The high court says that "very few people are fortunate to see their dreams fulfilled and people residing in the west coast saw fulfillment of their dream when the central government decided to provide a broad gauge railway line from Bombay to Mangalore and thereafter to extend it to Kerala." The Konkan Railway Corporation was set up for this purpose. The four benefitting states shared their resources and the corporation issued public bonds to raise funds for the 760 km line.

However, the Goa Foundation, claiming to protect environment, opposed the project. According to it, the railway line would irreparably damage the ecology of the region. It wanted the corporation to get environment clearance for the 106 km alignment passing through Goa. It alleged that the damage to the eco-system would be violative of Article 21 of the Constitution guaranteeing quality of life.

The Corporation denied that there would be any ecological damage. The project had been examined by several experts and they have reported that there would be no significant rise in air or noise pollution. The present alignment was the best available. It was also denied that the railway line would affect the mangrove and fishlife in the low-lying areas.

Ruling: The court dismissed the petition with costs observing that "our writ jurisdiction is meant to advance the cause of justice and not to defeat exercises undertaken by the government for public benefit. The machinery of the court should not be used for subserving the private interest or the interest of a local area to the detriment of the public at large."

The court remarked that the fears expressed by the petitioner were without basis. Even otherwise the damage would be "extremely negligible." A public project of such magnitude could not be deferred on such considerations. The court was bound to balance the hardship caused to a few people and the benefit derived by a large number of people. The cost of the project was bound to escalate if it was delayed. No development is

possible without some adverse effect on the ecology but projects cannot be abandoned on that ground. Since renowned experts have given the green signal to the project, the court would not stall it.

The court further rejected the argument that filling up of a small lake would stop the arrival of migratory birds calling it an imaginary fear. It held that clearance under the Environment Act was not necessary for the railway line, as it was not an industry. The project also did not violate the Forest Act.

The court remarked: "We hope and trust that everyone will realise that providing a rail line is neither a political nor a religious issue, but is undertaken for providing basic necessity of cheap and quick mode of transport."

5. DRINKING WATER SHORTAGE IN LAKSHADWEEP

F.K. Hussain vs. Union of India

This case highlights the threat to drinking water sources in remote islands. Though this refers to Lakshadweep, overexploitation of ground water supply is also an urban phenomenon these days. The High Court notes the problem, but disposes of the petition in general terms.

Facts: The petition was filed by a resident of the coral isles pointing out that the ground water resources there are limited and should be protected. Potable water is in short supply, and large-scale withdrawals with electrical and mechanical pumps can deplete the water sources causing intrusion of saline water from the Arabian sea. The administration has devised a scheme to augment water supply by digging wells. This would further upset the water equilibrium leading to salinity in the available water sources. This action amounts to an invasion of the fundamental right to life and liberty guaranteed under Article 21 of the Constitution, it was argued He sought appropriate directions from the court to stop this. He filed documents to support

his apprehensions about the depletion of water sources. In reply, the government stressed the need for increasing the water supply to meet the rising demand. It further submitted that pumps will be located only at shallow levels and water will be skimmed from the surface of available sources, guarding against excessive withdrawals.

Ruling: The court directed the Central Ground Water Board to investigate the various aspects raised in the petition and submit a report. The report confirmed the apprehensions of the petitioner. The Board team disapproved of the existing scheme and suggested alternative means of augmenting water supply, mainly by harvesting rain water, desalination and reverse osmosis. Expert bodies like the National Environmental Engineering Institute and the Centre for Earth Science Studies also recommended steps on these lines.

In conclusion, the court stated that a technically viable scheme, consistent with natural constraints must be evolved. "To decide on the modalities, the matter should receive a final look at the hands of the ministries of the government," the judgement said. The scheme as envisaged shall not be implemented until it gets the final green signal from the aforesaid agencies. If considered necessary, the government should pass statutory regulations and set up a responsible agency for monitoring the functioning of the system established. The question should be referred to the concerned ministry, the judgement said.

6. INDUSTRIES IN RESIDENTIAL AREAS

V. Lakshmipathy vs. State of Karnataka

This is a typical case of encroachment by industries into residential areas. It is a common occurrence in most urban areas. Land developers, politicians and officials violate town planning laws, causing danger to the air, water, and peace of the area. The court stopped the nuisance in this case, on a petition by the residents.

Facts: Several residents of a residential colony in Bangalore moved the Karnataka High Court through a writ petition alleging that the operation of industries violating the town planning law was causing health hazard to them. More than 30 industrial units were made respondents. They were running factories, workshops, manufacturing greases and lubricating oils, some of them inflammable. These activities resulted in emission of noxious smoke and vapour apart from unbearable noise. Though the residents were given plots for houses, the municipal authorities did not develop them. Only taxes were collected from them. On the other hand, the industrial units which had mushroomed had violated several land development laws. However, they were given public services like water and electricity. The petitioners had a long list of illegalities committed by the civic authorities and the industrial units. Most of the respondents declined to reply to the allegations when the petition was heard.

Ruling: Since there was no denial of the allegations, by the public authorities or the owners of the industries, the court held that the case against them has been established. It held that the change in the use of land from residential to industrial was violative of the laws, development plans and regulations. The court held that all actions of the authorities in this respect were void and illegal. The licences were also held illegal. The civic authorities were asked to stop the operation of the industrial units, remove all encroachments in public lands and roads and carry out the lay-out work in accordance with law. While awarding cost to the petitioners, the court asked the authorities to implement its orders within two months.

In the long judgement, the court made the following observations:-

"The movement for restoration and maintenance of a livable environment requires curbing of power of narrowly oriented administrative agencies in the appropriation of the dwindling acreage of land and water not already irrevocably appropriated."

"In a sense the problem is part of a large problem—that of rendering the big government more responsive to the needs of the individuals whom it governs."

"Environment protection is not a preoccupation of the educated and the affluent. It has a socio-political dimension. The disposal and control of toxic waste and governmental regulation of polluting industries is public interest oriented. The effective implementation of environmental legislation is a social learning process which could fundamentally change the character of public administration."

"The right to life inherent in Article 21 of the Constitution does not fall short of the requirements of qualitative life which is possible only in an environment of quality. Where, on account of human agencies, the quality of air and the quality of environment are threatened or affected, the court would not hesitate to use its innovative power within its jurisdiction to enforce and safeguard the right to life to promote public interest."

The judgement also quoted the Directive Principles (Article 48-A) and the Fundamental Duties [Article 51-A(g)].

7. INDUSTRIES IN CROWDED AREAS—I

M.C. Mehta vs. Union of India

Most cities have industrial units producing hazardous substances situated in crowded areas. In 1984 a gas leak from the Union Carbide factory killed nearly 4,000 people in the heart of Bhopal. A year later, gas leak from Shriram Foods and Fertilizer Industries in Delhi sent panic in the capital and rendered several ill. This case deals with such instances.

Facts: The Delhi factory situated in 76 acres is surrounded by thickly populated colonies inhabited by over 2 lakh people. the chlorine plant was established in 1949. After the Bhopal catastrope, the question was raised in Parliament about the safety standards of this old plant. A committee was set up to study

them and it made several recommendations. Nevertheless, the gas leak occurred soon thereafter. The unit was shut down by the authorities. The matter was raised through a public interest petition in the Supreme Court by lawyer M.C. Mehta.

Ruling: The petition raised some important questions regarding the liability of industrial units which produced hazardous substances, and whether they should be allowed to operate in crowded areas and if so under what conditions. The immediate question was whether the factory should be reopened.

The court at first appointed a team of experts to see whether the earlier recommendations of the Government's committee were implemented. The company was also allowed to appoint a committee to go into the causes of the accident. Since the two committees came up with conflicting opinions, the court appointed yet another committee. It made various suggestions. The court also had the benefit of another panel set up the Lt. Governor of Delhi after the accident.

All reports were unanimous that safety measures can only minimise the risk to the workers and the public and it cannot be eliminated. The petitioner argued that the unit should not be allowed to be restarted as there was no guarantee against another disaster. The workers' union, on the other hand, opposed permanent closure as it render 4,000 persons unemployed. Meanwhile, there was a dispute between the parties regarding the implementation of the earlier recommendations of the committees. The management maintained that they have been largely carried out. The court appointed another committee to find out whether the suggestions were carried out. Its report stated that most of the suggestions were implemented. Therefore the court allowed the re-opening of the factory, subject to stringent conditions.

Among the conditions: (1) A committee will continue to monitor the safety standards every fortnight, (2) the workers will have representatives in another committee to look into the ar-

rangements. (3) workers shall be trained in operating the equipment. (4) loudspeakers shall be installed in the premises to warn of any danger. (5) and workers shall be provided gas masks, helmets, etc.

The court suggested to the government to set up an authority to oversee the functioning of hazardous industries. It also asked the government to evolve a national policy for location of chemical plants where population is scarce, and establish green belts around them. The court also recommended the establishment of environment courts to deal with the ecological questions which are increasingly coming up for adjudication.

Another aspect of the case was the liability of the company to pay compensation to the victims of the gas leak. The court appointed the Chief Metropolitan Magistrate as the authority before whom all claims may be filed within four weeks. Those who file the claims should be examined by medical experts. That task was entrusted to the Delhi State Legal Aid Board.

8. RESPONSIBILITY OF OFFICERS—II

M.C. Mehta vs. Union of India

This order is a modification of the earlier one in the Shriram Industries gas leak case. Some of the conditions imposed by the court for reopening of the fertilizer unit were pleaded to be harsh in the circumstances. Therefore the company moved the court again for relaxation of the conditions. Some pleas were acceded to, but others were rejected. The major question was the liability of the managers in case of an industrial accident. It is dealt with below.

Ruling. The original order stated that the management of Shriram shall obtain an undertaking from the Chairman and managing director of the holding company, as also from the officers who were in actual management of the Chlorine plant that in case of gas leak and consequent injury "they will be personally responsible for payment of compensation for such death or injury."

The management submitted that it was difficult to say who was the officer concerned, and if such undertakings were demanded, no competent officer would be willing to give them. The court clarified that the officer whose undertaking was required was the one who was the 'occupier' under the Factories Act 1948, because he was the person who had actual control over the plant.

However, the court rejected the request to delete the condition altogether. It said that if the unit was reopened after claiming that it was totally safe to operate, there was no reason for its officers to hesitate to give an undertaking regarding personal liability. But the court recognised the fact that if absolute, unlimited liability was imposed on officers, competent officers would not accept employment. Therefore, the court modified the condition and stated that in case of escape of gas resulting in death or injury, "the officer concerned will be personally responsible to the extent of his annual salary with allowances, but if he shows that such escape of gas took place as a result of Act of God or vis majeur or sabotage or that he had exercised all due diligence to prevent such escape of gas, he shall be entitled to be indemnified by Shriram."

The company had argued that the chairman and managing director should be exempted from personal liability as they were not concerned with the day to day working of the several units run by it in various places. But the court did not entirely remove that condition. It stated that they would be exempt from personal liability only in case of accident due to Act of God or vis majeur or sabotage. But in all other cases, the chairman and managing director must hold themselves liable to pay damages

Another important condition for reopening was the participation of workers' union in the safety steps. A committee of two unions were given wide powers to check the safety aspects. The management pleaded that workers could not be trained to such an extent that they would be able to acquire the intricacies of

the safety aspects of the sophisticated machinery. The court rejected this argument. It said that ordinary workers though not highly educated, have been able to acquire sufficient expertise through long experience in the operation of machinery which they were working. Therefore the order was sustained with minor modification.

9. CLEANING GANGA OF INDUSTRIAL POLLUTION

M.C. Mehta vs. Union of India

This judgement marks the beginning of a series of orders passed by the Supreme Court to stop the pollution of Ganga waters by industries and municipalities along the river, which flows through eight states. The court closed down several factories which failed to set up effluent treatment plants. It monitored the progress of implementation of its orders. The petition is still being heard (1995) by the court occasionally for this purpose, though the petition was filed in 1985.

Facts: The public interest petition was filed by a lawyer, M.C. Mehta, seeking to restrain the tanneries of UP from discharging industrial effluents into the Ganga. Later, the scope of the petition was widened to include the municipalities which let out the sewerage into the river and all industries along the course of the river especially those in Bihar and West Bengal. Initially, the court issued notice under Order 1 Rule 8 of the Code of Civil Procedure by publishing the gist of the petition in major newspapers. It called upon all industrialists and local bodies to appear before the court and answer to the allegations in the petition. Many of them appeared and many did not. The court took up the case of tanneries first and passed orders, which were to be the model for further directions over the years.

Ruling: The most dramatic part of the judgement was its order to close down nearly 30 tanneries in UP for causing pollution. Several others were given a six-month deadline to set things right or meet the same fate. This sent shockwaves in the industry as it showed that the court meant business.

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The judgement recalled Article 48-A of the Constitution which enjoined the government to protect and improve the environment. Article 51-A made it the duty of every citizen to do the same. The court invoked the provisions of the Water (Prevention and Control) Act 1974, Environment (Protection) Act 1986 and the proclamation adopted by the UN Conference on the Human Environment at Stockholm in 1972 to justify the judicial intervention.

There was not much dispute on the question that the discharge of trade effluents from the tanneries in Jajmau, Kanpur, was a threat to the life of the people in the area and aquatic life in the Ganga. The tanneries argued that they were discharging the effluents into the municipal sewerage, thus passing the buck to the local authorities. But the court did not accept that argument and stated that the tanneries themselves should own liability.

The court received expert opinion from scientists who suggested primary and secondary treatment plants to be set up to clean the water. The court gave time to the tanneries to set up at least primary units. Those tanneries which failed to set up these units and even ignored the public notice were named and closed down.

The court stated that the financial capacity of the tanneries should be considered irrelevant while requiring to set up treatment plants. Just like an industry which cannot pay minimum wages cannot be allowed to exist, tanneries cannot be heard to say that they cannot afford to set up primary treatment plants. Moreover, the tanneries were not taken by surprise. They were being asked to set things right for several years.

The court also directed the central government, the UP Water Pollution Control Board and the district magistrate to enforce the order faithfully. The court noted in conclusion: "We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people."

10. OBLIGATIONS OF CIVIC AUTHORITIES

M.C. Mehta vs. Union of India

In the earlier judgement (AIR 1988 SC 1037), the Supreme Court dealt with tanneries of Kanpur polluting the Ganga. In continuation of the same case, this judgement deals with municipal authorities along the river in UP which discharge untreated sewerage into the river. Since Kanpur municipal corporation is the biggest culprit in UP, the focus is on Kanpur. The court laid down an action plan to be implemented in six months.

Facts: Several reports were examined by the court which showed that water in the Ganga near Kanpur was not safe for drinking. Among the pollutants were: 16 drainages which discharged untreated water into the river; dung and fodder waste from the cattle population; night soil collected from unsewered areas and thrown into the drainage; 80 tanneries, dhobi ghats and defecation by the poor people. M.C. Mehta, the petitioner, pointed out the progress report of the Ganga Action Plan which showed the seriousness of the problem. In short, the Ganga water was not fit for drinking, bathing or fishing.

Ruling: The judgement first dealt with the question whether the petitioner who is not living on the Ganga can bring an action of this type. In common law, the corporation can be restrained on an action brought by an owner of land near the river. But here is a case of a person living in Delhi who brings a case against the corporation. The Supreme Court nevertheless held that he was entitled to a hearing to enforce the duties of the municipal authorities. He is a person interested in protecting the lives of the people who use the Ganga water. It is a public interest litigation. The nuisance caused by the Ganga pollution is a public nuisance. There are several provisions in the civic laws which impose duties on the authorities. But as they have failed to obey them, they have to bear the major responsibility for the pollution of the river.

The court then passed several directions to the concerned authorities to improve the situation. Among them:-

(1) The Corporation was asked to submit to the Water Pollution Control Board within six months its proposals for sewage treatment plants.

(2) Appropriate steps to tackle wastes accumulated at the dairies.

(3) Immediate steps to increase the size of sewers in the labour colonies.

(4) Construction of sufficient number of latrines for the free use of poor people.

(5) The High Court should not normally stay the action taken against anyone who is committing nuisance. In any case, such cases should be disposed of fast, say in about two months.

(6) The authorities must ensure that dead bodies and half-burnt bodies are not thrown into the Ganga.

(7) Licences should not be granted to new industries which have no efficient effluent treatment plants.

The court also called for environment awareness in school syllabus, observance of "cleanliness week" and such other measures. It made it clear that these directions should be followed with appropriate changes by civic authorities in the rest of the country.

11. ENVIRONMENTAL AWARENESS THROUGH MEDIA

M.C. Mehta vs. Union of India

Awareness of the need to protect environment is basic to the preservation of natural resources. This case deals with the question of environmental education. The court suggests that the

radio and television devote a few minutes every day to ecological topics.

Facts: The petitioner, who has taken up several environmental issues, filed this public interest petition in the Supreme Court seeking certain directions to the government to promote ecological awareness. Among his requests:- direction to cinema halls to exhibit slides on environment free of cost, regular programmes on radio and television to educate people about environmental protection and making studies on environment compulsory in schools and colleges. The court issued notice to the Central Government and the Attorney General cooperated in the litigation.

Ruling: The judgement noted that no law can effectively work unless there is an element of acceptance by the people. Therefore there should be awareness of the law in the first place. This would be possible only when steps are taken to make people aware of the necessity to follow the laws. Keeping the citizens informed is an obligation of the government. Therefore the court accepted in principle the prayers in the writ petition. Since the Attorney-General has cooperated in the litigation, the court disposed of the petition with following, among other directions:

(1) The government shall make it a condition of licence of all cinema halls, touring cinemas and video parlours that they shall exhibit free of cost at least two slides/messages on environment in each show. The Ministry of Environment must prepare within two months brief and efficient messages which should be circulated to collectors who are the licensing authorities. Failure on the part of the exhibitors to show the messages would be ground for cancellation of the licences.

(2) The Ministry of Information and Broadcasting shall produce short information films on various aspects of environment. One such short film shall be shown every day from February 1992.

(3) All India Radio and Doordarshan were asked to broadcast short programmes on environment frequently.

(4) The suggestion for compulsory study of environment in schools was accepted in principle. The Attorney-General also agreed that the University Grants Commission would take steps to prescribe a course on environment in colleges. As education upto college level was the responsibility of the State Governments, the court asked them to introduce compulsory study of environment in schools.

While disposing of the petition, the court gave liberty to Mehta to apply to the court from time to time for further directions if necessary.

12. AIR POLLUTION FROM MOTOR VEHICLES

M.C. Mehta vs. Union of India

This is a public interest case in which a lawyer moved the Supreme Court seeking steps to control air pollution in Delhi caused by motor vehicles. The court monitored the enforcement of the Motor Vehicles Rules which deal with pollution and appointed a committee to suggest improvements. But several years after the orders, Delhi still topped all Indian cities in air pollution.

Facts: The petition was filed giving data about the high amount of pollution in Delhi. The main hazard to the air came from heavy motor vehicles, including the state-run public transport. In the reply filed by the Ministry of Environment, it accepted the fact that the main cause of pollution was the rising number of vehicles. The government submitted that several prosecutions had been launched against polluting vehicles. Registrations had also been cancelled, the government claimed. The Attorney General further said that mere prosecutions would not help, without a massive programme of educating the pliers of automobiles about reducing pollution. He also undertook to bring into operation certain rules which were not notified till then.

Ruling The court in one of the orders called for the statistics about the prosecutions launched against polluting vehicles. It also sought the details of the vehicles whose registrations were suspended, as claimed by the government.

In the second order in the same case, the court set up a committee to make assessment of technologies, low cost alternatives, feasibility of measures to reduce or eliminate pollution. The court heard the government, several experts and the Association of Indian Automobile Manufacturers, among others. The discussion touched upon several technical aspects. Some suggestions required laboratory testing. All these were referred to the expert committee headed by a Supreme Court judge.

In conclusion, the court said in its order that the petition "shall be deemed to be pending for the purpose of monitoring. The committee shall furnish a report to the Supreme Court once in two months as to the steps taken in this matter."

Though the reports were discussed for some time, very little was done in the following years. The result was there for all to see. As the number of vehicle rose tremendously, the pollution also rose. Delhi has more automobiles than all those in Calcutta, Bombay and Madras put together. It also tops in air pollution now.

13. STONE CRUSHER UNITS CLOSED

M.C. Mehta vs. Union of India

In this series of orders, the Supreme Court dealt with violations of the air pollution control laws by the stone-crushing units around Delhi. It closed some units and passed further directions to the authorities to protect environment

Facts Lawyer M C Mehta filed a writ petition challenging the continuance of stone crushing operations in the neighbourhood of Delhi and the consequent pollution The Supreme court ordered closure of the operations The operators then moved the Delhi High Court and obtained favourable orders When the

petitioner moved the Supreme Court again, the apex court transferred all cases pending before the high court to the Supreme Court.

Some stone crusher owners submitted that they were complying with the air control laws. But the petitioner contended that they had set up units in non-conforming areas and therefore they cannot operate in any case. Therefore the court called for reports from the Delhi Development Authority and the Haryana Development Authority on this question. The court also asked the Central Pollution Control Board to inspect the crushers and submit its report.

Ruling: The court closed down the stone crushers and passed strictures on the Delhi and Haryana authorities for allowing their operations.

The court said: "We are conscious that environmental changes are the inevitable consequence of industrial development in our country, but at the same time, the quality of environment cannot be permitted to be damaged by polluting the air, water and land to such an extent that it becomes a health hazard to the residents in the area. We are constrained to record that the Delhi Development Authority, the Municipal Corporation of Delhi, and the Central Pollution Control Board have been wholly remiss in the performance of their statutory duties and have failed to protect the environment in Delhi. Utter disregard to environment has placed Delhi in the unenviable position of being the world's third grubbiest, most polluted and unhealthy city as per a study conducted by WHO. Needless to say that every citizen has a right to fresh air and to live in pollution-free environment."

The court then ordered the closure of stone crushers situated in specific areas. The petitions filed by the owners in the high court were dismissed. All crushers which had no licences in other areas were also closed down. The authorities were directed to ensure the closure of these units.

The Town & Country Planning Department of Haryana meanwhile brought a plan to resettle the closed units in another part of the State. The court accepted the plan and asked the Haryana Government to allot land to the affected units in the new "crushing zone" within six months. The authorities were asked to send a progress report to the court, which monitored the directions for some time.

14. QUARRIES CLOSED TO SAVE HILLS

Rural Litigation and Entitlement Kendra vs. State of U.P.

This public interest litigation brought to the Supreme court by the petitioner organisation was the first of its type seeking to save environment from human exploitation. The case was heard several times over the years and appropriate orders passed. There were ten other important orders apart from the present one between 1985 and 1991. This order indicates the general trend in this litigation and the others refer to specific problems of individual miners.

Facts: The petitioner organisation moved the court for the protection of the Mussoorie Hill range of the Himalayas from mining operations. The arguments on both sides brought into sharp focus the conflict between development and conservation and the need to reconcile the two. Though the court has not passed its reasoned judgement, it has passed several interim orders to stop or regulate the mining operations and thus save the forests and air of the region.

Ruling: At first instance, the court set up an expert committee to inspect the lime stone quarries and report to the court. It submitted three reports and divided the quarries into three groups. The quarries in the A group, which was most harmful to the environment, were ordered to be closed down permanently. The State Government shall not have any liability for the termination of the leases. The court set up another committee to study the impact of the B category quarries and those operating within

the city limits of Mussoorie. Category C quarries, which did comparatively less harm and were outside the city limits, were allowed to operate subject to the observance of the Mines Act and the Metalliferous Mines Regulations.

The court discussed the consequences of the closure of the quarries. The closure would "undoubtedly cause hardship to them (owners), but it is a price that has to be paid for protecting the right of the people to live in a healthy environment." In order to mitigate their hardships, the court directed the UP Government that if any other area was thrown open to lime stone quarrying, those who lost their site in Mussoorie shall be given priority in allotment.

The closure of the quarries also affected workers. But the quarries which had been closed down will have to be reclaimed and afforested. Therefore the court directed the government to take immediate steps to reclaim the area and employ those who had lost their work due to the closure of the quarries.

Over the years, the court also passed orders with regard to individual problems faced by the quarry owners.

15. FIVE STAR HOTEL IN ZOO AREA

Sachidanand Pandey vs. State of West Bengal

This is a case where public interest litigation by a few persons, claiming to protect environment, misfired and brought forth adverse remarks against them. The judgement also laid down guidelines for courts in ecological matters.

Facts: The West Bengal Government allotted four acres of the zoological gardens to the Taj Group of Hotels on lease for constructing a five-star hotel. The government took the decision after studying all aspects of the issue. However the petitioners argued in the high court and the Supreme Court that the deal not only violated statutory procedures but also ignored ecological considerations like the effect on migratory birds. The court

rejected the arguments of the petitioners and cautioned on the use of public interest petition for this purpose.

Ruling. In India and elsewhere in the world, there is ecological degradation of menacing proportions in all cities. If the government is alive to the problems and arrives at a conscious decision after taking them into account, the court may not interfere. However if relevant factors are not borne in mind and irrelevant considerations influence the decision, the court may interfere to protect public interest. Whenever an ecological question is brought before the court, it must bear in mind Article 48-A of the Constitution (relating to protection of environment) and Article 51-A(g) which deals with the fundamental duty of every citizen to protect and improve environment. When the court is called upon to give effect to these principles, "the court is not to shrug its shoulders and say that priorities are a matter of policy and so it is a matter for the policy-making authority." The least that the court may do is to examine whether appropriate considerations are borne in mind and irrelevancies excluded.

In this case, the government publicised the scheme to promote tourism and for this purpose invited parties intending to establish five-star hotels in Calcutta. Only two parties responded and out of them the Taj group was selected after due consideration. The government acted bona fide and its action was not against the interests of the zoological garden or its inmates.

While the main judgement was written by Justice O. Chinnappa Reddy, Justice V. Khalid added a few notes on the conduct of public interest litigation. He said that public spirited persons were rushing to the courts too fast and too often. But they must inspire the confidence of the court and the public. They must be above suspicion. As the present case shows, there is need for restraint on the part of litigants. "Public interest litigation has now come to stay. But one is led to think that it poses a threat to courts and public alike. Such cases are now filed without any rhyme or reason. If courts do not restrict the free flow of

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such cases, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions." It is only in cases of gross violation of fundamental rights, courts should leave aside procedural shackles and grant remedy. But the courts should not opens its doors to anyone to walk in.

16. SUGAR MILLS TOLD TO MEND WAYS

Satish Chandra Shukla vs. State of U.P.

This is a public interest litigation in which it was alleged that a sugar mill in Gonda district of UP was polluting the water and air in the area. The court directed that corrective steps should be taken.

Facts: A letter from the principal of Acharya Narendra Dev University, Gonda, was treated by the court as a writ petition. It was alleged that the sugar factory was causing pollution in the locality by discharging its trade effluents and ash component from the boiler.

Ruling: The sugar factory undertook before the court that effluent treatment instruments would be fixed before it began operation in the next season. Sugar manufacturing is a seasonal business depending upon the availability of sugarcane. Upon the assurance of the factory that it would take steps before it restarted operations in the following season, the court did not pass further directions.

So far as the ash component was concerned, the factory said it was set up in 1932 and the machinery then available did not take into account the problem of atmospheric pollution. Also, there were hardly any people living around the factory when it was set up. The factory submitted that steps had already been taken to replace the boiler system to control the ash component going out in the air. The court therefore directed the State Pollution Control Board to ensure that the effluents are treated before the unit restarted and the boiler was replaced within a

time-frame. The Board was asked to file two compliance reports in the court within a year.

17. POLLUTION CASE TO SETTLE SCORES

Subhash Kumar vs. State of Bihar

This is another case of misuse of pollution case for personal ends. Though the petition was couched in the form of public interest, the court found that it was a malafide proceeding and the petitioner was asked to pay costs.

Facts: The petition was filed seeking to stop discharge of sludge from coal washeries into Bokaro river in Hazaribagh district. The respondents were the director of collieries in the district, and the Tata Iron & Steel Co.Ltd, from whose washeries sludge was supposed to be discharging. It was alleged that the effluents from the washeries settled in the river bed and the agricultural land. Thus the water was rendered unfit for drinking or irrigation. It was further alleged that despite complaints, the state water pollution control board was not taking any steps to stop the discharge. The state government and TISCO denied the charges. The board stated that the company had constructed four ponds to collect the effluents and rewash them. Samples of the effluents were being taken and tested and there was no violation of the rules. There was no discharge of effluents into the river.

Ruling: On the finding that there was no pollution caused by the washeries, the petition was dismissed. But the court found that the petitioner had not approached it with clean hands. He was buying slurry from the company for many years. With the passage of time, he wanted more and more slurry. The company refused his request. He then forcibly collected slurry leading to criminal cases. In order to feed fat his personal grudge, he took several legal proceedings including the present petition in the Supreme Court. The court concluded that he was not acting in public interest but for private gain.

The judgement said, "If anything endangers or impairs the quality of life in derogation of laws, a citizen has a right to have recourse to Article 32 of the Constitution for removing the pollution of water or air." But recourse to the remedy should be taken by a person genuinely interested in the protection of society on behalf of society. Otherwise it would amount to abuse of process of the Court. "It is the duty of this court to discourage such petitions and to ensure that the course of justice is not obstructed or polluted by unscrupulous litigants," the judgement remarked in conclusion.

18. CUTTING TREES IN GREEN BELT STOPPED

M.L. Sud vs. Union of India

This case highlights the value of green belt in the concrete jungle in our cities and how citizens can protect the existing trees from so-called development. The court gave elaborate directions to protect the greenery.

Facts: Jahanpana forest in South Delhi is a beautiful forest and part of the historical heritage of the capital. The forest covers 4 acres. In the master plan of Delhi, this area is shown as "green" and it is to be maintained as a city forest. The petition was filed when the Delhi Development Authority (DDA) began to cut trees in this forest to lay roads to serve the increasing population around the forest. DDA hotly contested the allegation, faced with public outcry in the media. It asserted that the plantation of trees in that area was one of its programmes. It also gave an undertaking that no tree would be felled in the area, except the diseased ones with the permission of the horticulture department. It also submitted that no construction would be made except for providing sanitary facilities to the visitors of the forest.

Ruling: In view of the undertakings of DDA, the court did not go into the allegations, but bound down DDA to certain obligations. The order said: "It will be open to the DDA to make one

track or road not more than two meters in width in the shape of figure 8, but no other road or track will be made in the area. The DDA is directed to ensure that no vehicles are allowed to be used in the area other than bicycles and even these are to be permitted to be used by children below 12 years of age. If any construction is put up by any private person, DDA will take step according to law to have the same demolished. . . We direct the conservator of forests of the Government of India to visit the area once every three months and to report whether any infringement of our directions is being made."

19. PROTECTING MONUMENTS FROM POLLUTING UNITS

Surendra Kumar Singh vs. State of Bihar

This is a rare case in which stone crushing industries operating near monuments were shifted to save the heritage. Later, the Supreme Court tried to shift air polluting industries from the Taj Mahal area, but it was faced with stiff resistance from the owners of foundries and glass units. But this case sets a legal precedent for such a course of action.

Facts Illegal quarrying was going on around three hills which were declared as protected monuments. They were—Ramshilla, Prethilla and Brahmyoni hills in Bihar. When this case was heard by the Patna High Court, it passed an order stating that no stone-crushing industry should be allowed to be located within a distance of half a km from the area of the protected monuments Any unit within that area was ordered to be shifted, to prevent desecration of the hills. Some industrialists appealed against this order to the Supreme Court, challenging the jurisdiction of the High Court to pass such an order, as the distance was arbitrarily fixed.

The State Government supported the order of the high court. Moreover, the government allocated 6 acres of alternative land in Gaya district to resettle the affected units. The displaced

units were offered this developed land subject to necessary terms and conditions for the preservation of the monuments.

Ruling: In the appeal many new industrialists joined issue in the Supreme Court. The court dismissed all these new petitions. Regarding the units which had moved the high court, they expressed their willingness to shift to the new sites provided electricity was provided to them. The state government promised that it would help the units to shift their power installations. In order to facilitate the shifting the Supreme Court directed the state electricity board "to act in aid of the assurance given by the government and provide facilities for shifting of electric installations to the place allotted to them for their crushing operations."

20. MINING IN TIGER SANCTUARY

Tarun Bharat Sangh vs. Union of India

Though some forests have been declared "reserved" under the Forest Act, and wild life sanctuaries have been established in them, often miners, encroachers and others cause ecological harm to the area. Social action groups can seek the court's help to enforce the forest and environment laws in such cases. This is one such case, where the court passed the following order in 1991, but continued to monitor the progress of its implementation for several more years.

Facts: The petitioner organisation brought this public interest litigation for the enforcement of certain notifications under the forest conservation, wild life and environment protection laws. The Sariska tiger park in Alwar district of Rajasthan was declared a game reserve by the state government. As a result, no mining activity can be carried out in the protected area. Despite this, the state government allegedly issued 400 mining licences to various persons. Their activities harm not only the wild life but also the ecology of the region. The petitioner submitted several expert reports to support this allegation.

The state government admitted that licences have been given to miners to operate inside the protected area and since it wanted to preserve the environment, it was taking appropriate action. The miners' association raised some technical points and objected to the stoppage of their licences while statutory procedures were pending.

Ruling: The court named a five-member committee headed by an ex-chief justice of the Delhi High Court and comprising the wild life warden, director of mines, the district collector and an expert on environment. This committee was to ensure the enforcement of the notifications and ascertain the boundaries of the protected area as these were disputed. It can recommend to the government to provide alternative mining sites outside the area to bonafide grantees of licences for the remaining period of their term. It shall also recommend to the court the steps to be taken to preserve the area, after assessing the damage.

Meanwhile, the court made an interim direction that no mining operation shall be carried on in the protected area. The state government was prohibited from granting any more leases or renewals for mining in the area.

In the later orders, the court stopped the mining in the protected area and passed several directions to ensure the well-being of the wild life. The petition is still kept pending in the court, so that the progress of the enforcement of its orders can be monitored.

21. PROSECUTION OF POLLUTING FIRMS

UP Pollution Control Board vs. Modi Distillery

This case raised the question of the liability of the chairman, vice-chairman, managing director, directors and other persons responsible for running the company for causing pollution. There was a technical flaw in their prosecution, and therefore the Allahabad High Court quashed their prosecution. The Supreme

Court, on appeal, said that the flaw can be corrected and sent the case back to the Chief Judicial Magistrate.

Facts: Modi Distillery in Ghaziabad produces and sells industrial alcohol. It is a unit of Modi Industries Ltd. The distillery discharged highly noxious and polluted trade effluents into the Kali river without the consent of the State Pollution Control Board. Instead of the parent company, the distillery had sought consent for the discharge. The applications were incomplete in details. Ultimately the board took action under the Water (Prevention & Control of Pollution) Act 1974. The board lodged a complaint before the Chief Judicial Magistrate arraying 11 persons of the Modi Industries as accused. However, the board made a technical error in prosecuting the distillery instead of the company. The accused, including the chairman and managing director of Modi Industries did not appear before the Magistrate. In fact they went on appeal to the High Court. The High Court quashed their prosecution as it held that the chairman and others were not liable for prosecution when the company itself was not made a party. Therefore the board appealed to the Supreme Court.

Ruling: The Supreme Court set aside the High Court judgement and allowed the Magistrate to continue with the prosecution. The mistake in not naming the company in the complaint can be rectified. The distillery cannot go scotfree on account of the mistake of the legal officers of the Pollution Control Board.

Explaining Section 47(1) of the Water Pollution Act, the court stated that where an offence has been committed by a company, every person who at the time of the commission of the offence was "in charge of and responsible to" the company shall be deemed to be guilty. There are a few exceptions.

In this case, the chairman and other directors of Modi Industries which owned Modi Distillery could be prosecuted as having been in charge of and responsible to the company and could be deemed to be guilty of the offence charged with. The prob-

lem in this case was the creation of Modi Distillery as it did not furnish details sought for by the board regarding the persons responsible for running the unit. Having failed to give the information, the company cannot be allowed to take advantage of this lapse. The High Court dealt with only the flaw in the complaint but ignored that it was caused by the accused themselves. All that was required was to substitute the "Modi Industries" in place of "Modi Distillery," the Supreme Court underlined.

22. PROTECTING THE FORESTS

K.K. Vasant vs. State of Karnataka

This is a case where a public spirited lawyer moved the Karnataka High Court seeking to protect the forests. The prayers made in the writ petition were numerous and wide in range. The court declined to grant the reliefs sought, stating that its powers are limited.

Facts: The petitioner stated that there was no effective law to protect the flora and fauna of the state. Therefore the court should pass the necessary orders to save the forest. Among other things, he asked the court to stop exploitation of the virgin forest in the western ghats, cancel licences of forest-based industries, restrain plantation of eucalyptus in the ghats, ask the government to amend the Forest Act and implement it strictly. The state government replied that the reliefs asked for were not tenable and it was taking adequate precaution to protect the forest wealth It claimed that it was balancing the need for conservation of forests and industrialisation along with agriculture For this comprehensive development plan, the existing laws were adequate, the State argued. One of the leading wood-based industry, which was a respondent, pointed out its longstanding contract with the government The obligations of the state under the contract and the employment generated should not be ignored merely at the instance of a petitioner who claimed public interest.

Ruling: The court dismissed the petition stating that its powers are limited by the Constitution. Under the scheme of separation of powers in the Constitution the three wings of the State must function in their respective spheres independently of each other, unfettered by the other wings. The court cannot interfere with the daily routine administration of the state or in the making of laws. Judicial review must be strictly understood to protect the rights of the citizens when their legal or constitutional rights are affected by any order or enactment, not otherwise.

The judgement quoted extensively from the Supreme Court case (Rural Litigation and Entitlement Kendra, 1985 and 1988) the emphasise the above point. Though those judgements marked great steps forward in environmental litigation, the Karnataka court quoted from it only to stress that "it is for the government and the nation, and not for the court, to decide whether the (limestone) deposits should be exploited at the cost of ecology."

The Karnataka High Court stated in conclusion that it did not want to discourage the petitioner or the like of him. "Those who move the court in the name of public interest litigation must be equally aware of the limitations the courts have imposed on themselves in order to work within the framework of the Constitution and in harmony with the other wings of the government."

The court advised the petitioner to move the concerned legislators from the western ghat region to take initiative, to fill up the lacuna, if any, and get the relief which it was not able to give.

23. BIG LEAP IN ENVIRONMENT LAW

A number of judgements of far-reaching consequences relating to environment were delivered by the Supreme Court in 1996-2000. Some of them are referred to below.

In Indian Council for Enviro-Legal Action vs. Union of India [(1996) 3 SCC 212], chemical factories located in the Udaipur

district of Rajasthan were accused of destroying the water and vegetation of the area by discharging toxic substances. This PIL by a environmentalist organisation was moved in the Supreme Court seeking remedial steps. An expert committee was directed to submit a report to the court. It confirmed the fears expressed in the petition. Though the court had passed interim orders to the chemical units to remedy the situation, they were all flouted. The court ordered their closure immediately. Their reopening was subject to fulfillment of all the strict environmental rules.

This judgement is notable for the development of two legal principles in environmental law. The first is 'strict liability' According to it, "once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity, irrespective of the fact whether he took reasonable care while carrying on his activity." Though this theory was evolved in England in Rylands vs. Fletcher in 1868 in a House of Lords case, the courts in India had not applied it in mass disaster cases. Though the Constitution bench of the Supreme Court in M.C. Mehta vs. Union of India [(1987)1 SCC 395] introduced it in the oleum gas leak case of Delhi, doubts were expressed about its validity. The present judgement cleared all doubts about it and affirmed this principle.

The second principle, complementing the first, is "Polluter Pays". According to this, the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution.

The court ruled that the government has power under Sections 3 and 4 of the Environment (Protection) Act, 1986 to levy cost required for carrying out remedial measures. The court asked the government to determine the amount required for the steps to restore the ecology of the affected villages. The villagers were allowed to sue the industries separately for compensation

for the losses suffered by them. The central government and the state pollution control board were asked to file quarterly progress report on the implementation of the court orders. In order to encourage public interest organisations in social action measures, the court awarded Rs. 50,000 as cost to the petitioner-council. The judges mooted the idea of "green courts", specially to deal with environment matters.

The next case filed by the same organisation [(1996)5 SCC 281] dealt with coastal regulation zones. Hotel and tourism industries were damaging the ecological balance of the 6,000 km long coastline of the country. In an elaborate judgement, the Supreme Court asked the government to implement the strict rules of the 1991 Regulations. It quashed a 1994 notification which tried to dilute the rules. The apex court further directed that issues on the coastal regulations must be raised in the high courts. It made several other directions to protect the coastal region.

The Polluter Pays principle was applied in Vellore Citizens Welfare Forum vs. Union of India [(1996) 5 SCC 647] where the complaint in the PIL was that the tanneries in Tamil Nadu were discharging enormous amount of untreated effluents into the water resources, thus endangering the lives of the people. The court closed down the tanneries till they installed effluent treatment plants individually or collectively. It imposed a fine of Rs. 10,000 on each tannery in the five districts. The money collected was directed to be put in an environment protection fund, for compensating the affected people. The court passed ten other detailed directions in this case which may be studied for application in similar cases in other parts of the country. This judgement dwelt in detail with the theory of 'sustainable development'. It also referred to another modern principle—"Precautionary Principle". According to it, the government must anticipate, prevent and attack the causes of environmental degradation. When there is threat of irreversible damage, lack of

scientific certainty should not be a reason to postpone preventive measures. Moreover, the burden of proving that there is no such threat is on the industrialist or developer of a project.

In a case similar to the tanneries, the Supreme Court put brakes on the sugar and distilleries which were allegedly ruining the ecology of the surroundings. [In the matter of Bhavani River Sakthi Sugars Ltd: AIR 1998 SC 2578]. The Supreme Court criticised the Madras high court and the State Pollution Control Board for not dealing with the problem of unabated pollution. The matter was remanded to the high court for fresh disposal.

The 'Polluter Pays' principle was applied in S. Jagannath vs. Union of India (AIR 1997 SC 811) by the Supreme Court when it directed the closure of prawn farms functioning within the coastal regulation zone in Orissa, Andhra Pradesh, Tamil Nadu and other coastal states. It directed the industries operating in Chilka and Puliket Lakes areas in the eastern coast to compensate the affected persons according to the above principle. This case arose from a PIL which complained that the shrimp farms coming up all along the sea coasts were damaging the ecology and rendering the traditional farmers unemployed. They were also being ousted from the coastal belt. The court passed 16 elaborate directions in this case. It directed the central government to constitute an authority under the Environment Act to look into the ecology of the coastal areas.

Though this judgement dealt with all scientific and legal aspects of the case, several review petitions were filed by the prawn industries and also by the central government for modification of the directions However, as of now, there is no change in the ground situation.

Another PIL filed by Indian Council of Envirolegal Action (AIR 1999 SC 1502) highlighted the problem of contamination of drinking water by industrial pollution in certain Andhra Pradesh villages. After several interim orders by the Supreme Court and monitoring by it, the state government reported to the court that

it had laid down pipelines to the villages whose water supply was contaminated by industries discharging toxic effluents. The court accepted the statement and asked the Central Pollution Control Board and the State Board to jointly prepare a scheme of action for containing the pollution and disposal of industrial wastes. The order said: "The scheme will contain immediate steps to be taken either by the State government or by the industries concerned giving particulars thereof setting out the goal to be achieved every four months as also the steps to be taken on a long term basis for prevention of industrial pollution and the stages by which these long term measures have to be completed so that every four months both the pollution control boards can give a report as to whether the measures prescribed have been carried out or not."

The Supreme Court has been monitoring the relief and rehabilitation aspects of the Narmada dam in the PIL 'Narmada Bachao Andolan vs. Union of India. Earlier, the court stayed the construction of the dam at a certain height to avoid submergence of adivasi habitats. In 1999, it allowed the height to be raised, following a report submitted to the court. In 2000, the Supreme Court ruled that the "construction of the dam will continue as per the award of the tribunal and every endeavor shall be made to see t4hat the project is completed as expeditiously as possible." The three-judge bench was divided 2 to 1 and the judgement invited severe criticism from activists.

The Supreme Court continued to pass interim orders in M.C. Mehta vs. Union of India, directing the Delhi Government to close down polluting industries in residential areas in the capital and change fuel of public transport from petrol and diesel to CNG and other safer ones.

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